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4 State of Washington  
5 GROWTH MANAGEMENT HEARINGS BOARD  
6 FOR EASTERN WASHINGTON  
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9 KATHY MIOTKE and NEIGHBORHOOD  
10 ALLIANCE OF SPOKANE,

11 Petitioners,

12 v.

13 SPOKANE COUNTY,

14 Respondent,  
15

16 RIDGECREST DEVELOPMENTS, L.L.C., FIVE  
17 MILE CORPORATION, NORTH DIVISION  
18 COMPLEX, L.L.C., CANYON INVESTMENTS,  
19 INC., J. DONALD and VALENA CURRAN,  
20 and STEPHEN W. TREFTS d/b/a  
21 NORTHWEST TRUSTEE & MANAGEMENT  
SERVICES,

Intervenors.

Case No. 05-1-0007

**SECOND ORDER FINDING  
CONTINUED NON-COMPLIANCE**

22  
23 **I. PROCEDURAL HISTORY**

24 On August 25, 2005, KATHY MIOTKE and NEIGHBORHOOD ALLIANCE OF SPOKANE,  
25 by and through their representatives, Kathy Miotke and Bonnie Mager, filed a Petition for  
26 Review.

1 On September 1, 2005, the Board received Ridgecrest Developments, L.L.C., Five  
2 Mile Corporation, North Division Complex, L.L.C., Canyon Investments, INC., J. Donald and  
3 Valena Curran, and Stephen W. Trefts d/b/a Northwest Trustee & Management Services'  
4 Motion and Brief in Support of Motion to Intervene.

5 On November 9, 2005, the Board held a telephonic motion hearing. Present were,  
6 Dennis Dellwo, Presiding Officer, and Board Members Judy Wall and John Roskelley. Present  
7 for Petitioners were Rick Eichstaedt and Bonnie Mager. Present for Respondent was Martin  
8 Rollins. Present for Intervenors was Margaret Arpin.

9 On November 14, 2005, the Board issued its Order on Motions to Supplement the  
10 Record, Dismiss Participation of Intervenors, Dismiss Neighborhood Alliance of Spokane's  
11 Petition, Dismiss Petitioners' SEPA Claims, Motion to Restate Issues.

12 On January 19, 2006, the Board held the Hearing on the Merits. Present were,  
13 Dennis Dellwo, Presiding Officer, and Board Member John Roskelley. Board Member Judy  
14 Wall was unable to attend the final hearing, but has reviewed the record and arguments.  
15 Present for Petitioners were Rick Eichstaedt, Kathy Miotke, and Bonnie Mager. Present for  
16 Respondent was Martin Rollins. Present for Intervenors was Margaret Arpin.

17 On February 14, 2006, the Board issued its Final Decision and Order.

18 On July 12, 2006, the Board held a telephonic First Compliance Hearing. Present  
19 were, Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall.  
20 Present for Petitioners were Rick Eichstaedt, Kathy Miotke, and Lindell Haggin. Present for  
21 Respondent was Dave Hubert. Present for Intervenors was Stacy Bjordahl.

22 On July 17, 2006, the Board issued its Order Finding Continued Non-Compliance.

23 On September 29, 2006, the Board held a telephonic compliance hearing. Present  
24 were, Dennis Dellwo, Presiding Officer, and Board Members John Roskelley and Judy Wall.  
25 Present for Petitioners were Rick Eichstaedt, Kathy Miotke, Lindell Haggin. Present for  
26 Respondent was Dave Hubert. Present for Intervenors was Stacy Bjordahl.

## II. DISCUSSION

Spokane County admitted, at the September 29, 2006 hearing, that it has failed to bring itself into compliance with the Final Decision and Order on any of the issues where the County was found out of compliance. The County stated that it is continuing its five-year review of the County's Comprehensive Plan, including the Capital Facilities Plan (CFP), and is performing a land and population analysis. These activities are expected to be completed December 1, 2006.

The County remains out of compliance on all issues listed in the FDO in this matter.

The Board has been concerned with the County's consideration of additional applications for amendments to the UGA. Spokane County has informed the Board that it has received letters from the attorneys representing the applicants for 05 CPA 4 and 05 CPA 5 asking that those proposed amendments be considered as part of the 2006 Comprehensive Plan update rather than continue as separate amendments in the 2005 amendment cycle. This request has been accepted. Jim Manson, Director of the Building and Planning Division of Spokane County Public Works Department, states in his affidavit, the above, and further states that he is recommending that consideration of 05 CPA 3, which is presently being considered in the 2005 cycle, be suspended by the County and considered in the 2006 cycle.

James Manson further states that the County is conducting a population and land quantity analysis using the method suggested by CTED. This analysis should be completed in a short time, together with the Capital Facilities Plan (CFP). The transportation element of the CFP, and the storm water element of the CFP are complete already and are waiting adoption by the County. (Second Declaration of Jim Manson in Support of Statement of Action to Comply).

The Petitioners sought the imposition of sanctions, claiming that the County is refusing to timely comply and will continue to expand the UGA without the appropriate information unless the Governor is asked to impose sanctions on the County. The Board is aware that the County is working to update the CFP and perform a population and land

1 quantity analysis. The Board is also aware that the County has not expanded the UGA at  
2 this time pursuant to pending applications, although it is continuing to process an  
3 emergency amendment to add approximately five acres to the UGA. According to Jim  
4 Manson, the County has placed a moratorium on residential building permits in the airport  
5 area and has agreed to consider the bulk existing applications for UGA expansion in the  
6 2006 cycle, thus allowing the necessary updates and reviews to take place.

7 The Board remains concerned about the County's use of its "emergency" provision to  
8 allow further expansion of the UGA. Emergency land use changes are for emergency  
9 purposes, such as the necessary and immediate extension of water service, not as a tool to  
10 add a park or church property for developer purposes. The Board will reconsider sanctions if  
11 the County continues to use this method to add additional land to the UGA.

12 Because of the recent positive actions of the County, and the belief that further  
13 expansion of the UGAs will not occur at this time, the majority of the Board will not  
14 recommend the imposition of sanctions in this Second Order on Compliance.

15 The Board finds and concludes:

- 16 1. Spokane County has failed to update the CFP and perform a population  
17 and land quantity analysis to bring itself into compliance with the FDO  
18 issued in this matter.
- 19 2. Spokane County has further failed to address the other issues of non-  
20 compliance such as the "island UGA" and Critical Areas concerns.
- 21 3. Therefore, based upon RCW 36.70A.130(1) and the Board's February  
22 14, 2006, Order, the Board will enter a **Finding of Continued Non-**  
23 **compliance.**

### 24 **III. ORDER**

25 Based upon the Board's review of the GMA, prior decisions of the Boards, the  
26 February 14, 2006, Order, the presentations of the parties at the compliance hearing, and  
having discussed and deliberated on the matter, the Board enters a Second Finding of

Continuing Non-compliance – Therefore, Spokane County is directed to take the necessary steps to bring itself into compliance with this Order by **December 6, 2006**. Respondent's Statement of Action Taken to Comply is due **December 20, 2006**. Petitioners' compliance brief is due **January 3, 2007**. Respondent's and Intervenor's compliance brief is due **January 17, 2007**. Petitioners' optional compliance reply brief is due **January 24, 2007**. The Board will hold a telephonic Compliance Hearing on **January 30, 2007, at 11:00 a.m.** The parties will call **360-709-4803 followed by 527845 and the # sign**. Ports are reserved for Mr. Eichstaedt, Ms. Miotke, Ms. Haggin, Mr. Hubert, and Ms. Bjordahl. If additional ports are needed, please contact the Board office to make arrangements.

Pursuant to RCW 36.70A.300 this is a final order of the Board.

**Reconsideration**. Pursuant to WAC 242-02-832, you have ten (10) days from the mailing of this Order to file a petition for reconsideration. The original and four copies of a motion for reconsideration, together with any argument in support thereof, should be filed with the Board by mailing, faxing, or otherwise delivering the original and four copies of the motion for reconsideration directly to the Board, with a copy served on all other parties of record. **Filing means actual receipt of the document at the Board office**. RCW 34.05.010(6), WAC 242-02-240, WAC 242-02-330. The filing of a motion for reconsideration is not a prerequisite for filing a petition for judicial review.

**Judicial Review**. Any party aggrieved by a final decision of the Board may appeal the decision to superior court as provided by RCW 36.70A.300(5). Proceedings for judicial review may be instituted by filing a petition in superior court according to the procedures specified in chapter 34.05 RCW, Part V, Judicial Review and Civil. The petition for judicial review of this Order shall be filed with the appropriate court and served on the Board, the Office of the Attorney General, and all parties within thirty days after service of the final order, as provided in RCW 34.05.542. Service on the Board may be accomplished in person or by mail. Service of the Board means **actual receipt of the document at the Board office** within thirty (30) days after service of the final order. A petition for judicial review may not be served on the Board by fax or electronic mail.

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2 **Service. This Order was served on you the day it was deposited in the United**  
3 **States mail. RCW 34.05.010(19).**

4 **SO ORDERED** this 25<sup>th</sup> day of October 2006.

5 EASTERN WASHINGTON GROWTH MANAGEMENT  
6 HEARINGS BOARD

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8 \_\_\_\_\_  
Dennis Dellwo, Board Member

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John Roskelley, Board Member

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12 \_\_\_\_\_  
Judy Wall, Board Member